

INITIATION OF LEGISLATION

A petition to reinstate a good time program in the Michigan Department of Corrections that will allow a majority of prisoners to earn credit toward a reduction in their sentences by exhibiting positive behavior and avoiding major misconduct violations.

By initiation of legislation to amend section 33 (MCL 800.33) of 1893 PA 118, entitled “An act to revise and consolidate the laws relative to state prisons, to state houses of corrections, and branches of state prisons and reformatories, and government and discipline thereof and to repeal all acts inconsistent therewith” as amended by 1999 PA 148,

The People of the State of Michigan enact:

Sec. 33. (1) ~~A record of all major misconduct charges for which a prisoner has been found guilty shall be maintained and given to the parole board as part of the parole eligibility report prepared for each prisoner pursuant to section 35 of 1953 PA 232, MCL 791.235. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR EACH MONTH IN WHICH A PRISONER HAS NOT BEEN FOUND GUILTY OF MAJOR MISCONDUCT, THE PRISONER MUST RECEIVE GOOD TIME CREDIT. IN THE ABSENCE OF RECORDS OR BEHAVIOR, A PRISONER MUST RECEIVE GOOD TIME CREDIT FOR EACH MONTH AS TO WHICH THE DEPARTMENT OF CORRECTIONS LACKS A RECORD THAT IT FOUND THE PRISONER GUILTY OF MAJOR MISCONDUCT DURING THAT MONTH. (2) Except as otherwise provided in this section, a prisoner who is serving a sentence for a crime committed before April 1, 1987, and who has not been found guilty of a major misconduct or had a violation of the laws of this state recorded against him or her shall receive a reduction from his or her sentence as follows: (a) During the first and second years of his or her sentence, 5 days for each month. (b) During the third and fourth years, 6 days for each month. (c) During the fifth and sixth years, 7 days for each month. (d) During the seventh, eighth, and ninth years, 9 days for each month. (e) During the tenth, eleventh, twelfth, thirteenth, and fourteenth years, 10 days for each month. (f) During the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth years, 12 days for each month. (g) From and including the twentieth year, up to and including the period fixed for the expiration of the sentence, 15 days for each month. UNDER THE CORRECTIONS CODE, 1953 PA 232: (A) A “MONTH” MEANS A CALENDAR MONTH. (B) “GOOD TIME CREDIT” MEANS A REDUCTION OF 30 DAYS FROM A PRISONER’S SENTENCE. SUBJECT TO SUBSECTION (7), GOOD TIME CREDIT MUST BE DEDUCTED FROM A PRISONER’S MINIMUM AND MAXIMUM SENTENCE IN ORDER TO DETERMINE HIS OR HER PAROLE ELIGIBILITY DATE AND DISCHARGE DATE. (C) “MAJOR MISCONDUCT” MEANS ANY: I. ACT OF ASSAULT AND BATTERY, II. ASSAULT RESULTING IN SERIOUS PHYSICAL INJURY, III. ESCAPE, IV. FAILURE TO DISPERSE, V. FELONY, VI. FIGHTING, VII. HOMICIDE, VIII. INCITE TO RIOT OR STRIKE; RIOTING OR STRIKING, IX. POSSESSION OF DANGEROUS CONTRABAND, X. POSSESSION OF A WEAPON, XI. SEXUAL ASSAULT, XII. SEXUAL MISCONDUCT, XIII. SMUGGLING, XIV. SUBSTANCE ABUSE, XV. THREATENING BEHAVIOR. (3) Except as provided in section 34, all prisoners serving a sentence for a crime that was committed on or after April 1, 1987, are eligible to earn disciplinary and special disciplinary credits as provided in subsection (5). Disciplinary credits shall be earned, forfeited, and restored as provided in this section. Accumulated disciplinary credits shall be deducted from a prisoner’s minimum and maximum sentence in order to determine his or her parole eligibility date and discharge date. - A RECORD OF ALL MAJOR MISCONDUCT CHARGES OF WHICH A PRISONER HAS BEEN FOUND GUILTY MUST BE MAINTAINED AND GIVEN TO THE PAROLE BOARD AS PART OF THE PAROLE ELIGIBILITY REPORT PREPARED FOR EACH PRISONER UNDER SECTION 35 OF 1953 PA 232, MCL 791.235. (4) This section shall not be construed to allow good time, disciplinary credits, or special disciplinary credits, in cases of commuted sentences unless so stipulated in the executive order commuting the sentence. THIS SECTION 33 APPLIES TO ALL PRISONERS UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CORRECTIONS AND APPLIES RETROACTIVELY WITH RESPECT TO ANY PRISONER UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CORRECTIONS AS OF THE DATE THIS AMENDATORY ACT IS ENACTED INTO LAW. FOR EACH PRISONER TO WHOM THIS SECTION 33 APPLIES RETROACTIVELY: (A) WITHIN ONE YEAR OF THE DATE THIS AMENDATORY ACT IS ENACTED INTO LAW, THE DEPARTMENT OF CORRECTIONS MUST RECALCULATE SUCH PRISONER’S PAROLE ELIGIBILITY DATE AND DISCHARGE DATE. (B) IF THE PRISONER EARNED GOOD TIME CREDIT OR DISCIPLINARY CREDIT UNDER A PRIOR MICHIGAN LAW, ALL SUCH CREDIT MUST BE TREATED AS CONCLUSIVE EVIDENCE THAT THE PRISONER DID NOT ENGAGE IN MAJOR MISCONDUCT DURING THE RESPECTIVE TIME PERIOD FOR WHICH CREDIT HAD BEEN GRANTED. (5) Except as provided in section 34, all prisoners serving a sentence on December 30, 1982, or incarcerated after December 30, 1982, for the conviction of a crime enumerated in section 33b(a) to (cc) of 1953 PA 232, MCL 791.233b, are eligible to earn disciplinary credit of 5 days per month for each month served after December 30, 1982. Accumulated disciplinary credits shall be deducted from a prisoner’s minimum and maximum sentence in order to determine his or her parole eligibility dates. A prisoner shall not earn disciplinary credits under this subsection during any month in which the prisoner is found guilty of having committed a major misconduct. The number of disciplinary credits not earned as a result of being found guilty of a major misconduct shall be limited to the disciplinary credits that would have been earned for the month in which the major misconduct occurred. Any disciplinary credits not earned as a result of the prisoner being found guilty of a major misconduct shall never be earned or restored. The warden may order that a prisoner found guilty of a major misconduct, including but not limited to charges of rioting, inciting to riot, escape, homicide, or assault and battery, forfeit all or a portion of the disciplinary credits accumulated prior to the month in which the misconduct occurred. An order forfeiting accumulated disciplinary credits shall be based upon a review of the prisoner’s institutional record. The disciplinary credit committee, which is comprised of the prisoner’s resident unit manager, custody officers in the resident unit with direct supervisory responsibilities over the prisoner, and the appropriate work or school assignment supervisor, shall be part of the reclassification process and shall review, at least annually, the status of each prisoner in the housing unit who has forfeited disciplinary credits. The committee may recommend to the warden whether any forfeited disciplinary credits should be restored to the prisoner. In addition to disciplinary credits, a prisoner eligible for disciplinary credits under this subsection may be awarded 2 days per month special disciplinary credits for good institutional conduct on the recommendation of the disciplinary credit committee and the concurrence of the warden based on an annual review of the prisoner’s institutional record. Special disciplinary credits shall not be awarded for any month in which the prisoner has been found guilty of a major misconduct. The department of corrections shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement this subsection not more than 180 days after December 30, 1982. A PRISONER MUST NOT EARN GOOD TIME UNDER THIS SECTION DURING ANY MONTH IN WHICH THE PRISONER IS FOUND GUILTY OF HAVING COMMITTED A MAJOR MISCONDUCT. THE AMOUNT OF GOOD TIME NOT EARNED AS A RESULT OF BEING FOUND GUILTY OF A MAJOR MISCONDUCT MUST BE LIMITED TO THE AMOUNT OF GOOD TIME THAT WOULD HAVE BEEN EARNED DURING THE MONTH IN WHICH THE MAJOR MISCONDUCT OCCURRED. ANY GOOD TIME NOT EARNED AS A RESULT OF THE PRISONER BEING FOUND GUILTY OF A MAJOR MISCONDUCT MUST NEVER BE RESTORED. (6) On and after April 1, 1987, a prisoner shall not earn good time under this section during any month in which the prisoner is found guilty of having committed a major misconduct. The amount of good time not earned as a result of being found guilty of a major misconduct shall be limited to the amount of good time that would have been earned during the month in which the major misconduct occurred. Any good time not earned as a result of the prisoner being found guilty of a major misconduct shall never be earned or restored. A PRISONER WHO IS SERVING SENTENCES CONCURRENTLY ACCRUES GOOD TIME RESPECTIVELY AND CONCURRENTLY ON EACH SENTENCE. A PRISONER WHO IS SERVING CONSECUTIVE SENTENCES ACCRUES GOOD TIME CREDIT ON EACH RESPECTIVE SENTENCE IN CONSECUTIVE ORDER. (7) The department of corrections shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, prescribing how much of his or her accumulated good time or accumulated disciplinary credits the prisoner may forfeit if found guilty of 1 or more major misconducts. THIS SECTION MUST NOT BE CONSTRUED TO ALLOW GOOD TIME CREDIT IN CASES OF COMMUTED SENTENCES UNLESS SO STIPULATED IN THE EXECUTIVE ORDER COMMUTING THE SENTENCE. (8) The warden may order that a prisoner found guilty of a major misconduct forfeit all or a portion of the good time accumulated prior to the month in which the misconduct occurred. THE DEPARTMENT OF CORRECTIONS MUST PROMULGATE REGULATIONS IMPLEMENTING THIS STATUTE WITHIN NINETY (90) DAYS OF THE DATE THIS AMENDATORY ACT IS ENACTED INTO LAW. FOR A PERIOD OF TWO (2) YEARS AFTER THE DATE THIS AMENDATORY ACT IS ENACTED INTO LAW, THE ACTIONS IDENTIFIED AS MAJOR MISCONDUCT IN SUBSECTION (2)(C) MUST BE INTERPRETED TO HAVE THE DEFINITIONS SET FORTH FOR “CLASS I MISCONDUCT” IN ATTACHMENT A TO DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE 03.03.105 EFFECTIVE AS OF JULY 1, 2018. (9) The good time committee, which is comprised of the prisoner’s resident unit manager, custody officers in the resident unit with direct supervisory responsibilities over the prisoner, and the appropriate work or school assignment supervisor, shall be part of the reclassification process. The good time committee shall recommend to the warden the amount of special good time to be awarded and the restoration of any accumulated good time that has been forfeited. FOR ANY PERIOD IN WHICH THE DEPARTMENT OF CORRECTIONS FOUND THE PRISONER GUILTY OF ANY FORM OF MISCONDUCT, THE PRISONER MUST RECEIVE GOOD TIME CREDIT UNLESS THE DEPARTMENT OF CORRECTIONS REVIEWS THE MISCONDUCT AND DETERMINES THAT THE MISCONDUCT MEETS THE STATUTORY DEFINITION OF MAJOR MISCONDUCT. ALL SUCH DETERMINATIONS ARE SUBJECT TO A DE NOVO REVIEW. (10) The warden, as a result of good behavior, may restore to a prisoner the whole or any portion of the good time or disciplinary credits forfeited because of a finding of guilty for a major misconduct. However, forfeited good time or disciplinary credits shall not be restored without the recommendation of the disciplinary credit committee or good time committee and the prior written approval of the deputy director in charge of the bureau of correctional facilities or the deputy director in charge of the bureau of field services. Disciplinary credits or good time allowances that have not been earned because of institutional misconduct shall not be restored. WHEN INTERPRETING THIS SECTION 33, AND IN ADDITION TO OTHER RIGHTS GRANTED BY THE FEDERAL AND STATE CONSTITUTIONS: (A) NOTHING HEREIN CAN BE CONSTRUED TO EXTEND THE PAROLE ELIGIBILITY DATE OR DISCHARGE DATE OF ANY PRISONER BEYOND THEIR PAROLE ELIGIBILITY DATE OR DISCHARGE DATE AS OF THE DATE THIS AMENDATORY ACT IS ENACTED INTO LAW. (B) IN ANY CASE OF AMBIGUITY, THIS SECTION MUST BE CONSTRUED IN FAVOR OF GRANTING GOOD TIME CREDIT TO THE PRISONER. (11) A prisoner who has been sentenced concurrently for separate convictions shall have his or her good time or disciplinary credits computed on the basis of the longest of the concurrent sentences. If a prisoner is serving consecutive sentences for separate convictions, his or her good time or disciplinary credits shall be computed and accumulated on each sentence individually and all good time or disciplinary credits that have been earned on any of the sentences shall be subject to forfeiture pursuant to subsection (5) and (8). ALL REFERENCES TO “DISCIPLINARY CREDIT” OR “DISCIPLINARY TIME” IN THE MICHIGAN COMPILED LAWS ARE HEREBY STRICKEN, AND MCL 769.12(4) IS HEREBY REPEALED. (12) The warden of an institution may grant special good time allowances to eligible prisoners who are convicted of a crime that is committed before April 1, 1987. Special good time credit shall not exceed 50% of the good time allowances under the schedule in subsection (2). Special good time shall be awarded for good conduct only and shall not be awarded for any month in which a prisoner has been found guilty of a major misconduct. (13) The parole board shall be exclusively empowered to cause the forfeiture of good time or disciplinary credits earned by a prisoner at the time of a parole violation. (14) A prisoner subject to disciplinary time is not eligible for good time, special good time, disciplinary credits, or special disciplinary credits. (15) The court may order the reduction or forfeiture of 1 or more of the following credits pursuant to section 5513 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5513: (a) Good time. (b) Disciplinary. (c) Special disciplinary.~~